

# ShawPittman LLP

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March 11, 2003

## EX PARTE

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Portals II, TW-A325  
Washington, D.C. 20554

**Re: Application by Verizon Maryland, Verizon Washington, DC and  
Verizon West Virginia for Authorization to Provide In-Region, InterLATA  
Services in the States of Maryland, Washington, DC and West Virginia  
WC Docket No. 02-384**

Dear Ms. Dortch:

On February 21, 2003 Verizon filed an ex parte in response to the February 12, 2003 ex parte of the National ALEC Association/Prepaid Communications Association (“NALA/PCA”) regarding Verizon-Maryland’s refusal to resell its retail directory assistance (“DA”) service. Although Verizon continues to assert that resellers are “better off” with its continuing violation of Section 251(c)(4), its claim is without merit. If it were true, this matter would not be in dispute.<sup>1</sup> The fact is, Verizon would not defend its unlawful resale DA practices with such vehemence – and rebuff all requests to revise its Resale DA Tariff – unless it derived a substantial and unfair competitive advantage from those practices.

The Commission should reject Verizon’s efforts to simultaneously blame and exonerate the Maryland Public Service Commission (“MPSC”). As the record before the Commission establishes, Verizon bears full responsibility for its noncompliance with federal law; it was Verizon, not the MPSC, that first suggested provisions denying resellers the monthly call allowance provided to Verizon’s retail customers. The record also establishes that the MPSC’s decision in approving Verizon’s Resale DA Tariff was not based on “incorrect inputs” or mere

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<sup>1</sup> See, *Metro Teleconnect Companies, Inc. v. Verizon Maryland Inc.*, File No. EB-02-MDRD-016 (contesting Verizon’s resale DA practices). Likewise, MCI would not have sought a ruling that the actions of the five commissioners of the Maryland Public Service Commission (“MPSC”) in approving Verizon’s resale DA tariff violated the 1996 Act and a permanent injunction prohibiting the MPSC commissioners from accepting a Verizon tariff that did not include a wholesale rate of \$0.00 per call for the first six (6) residential DA calls per month. See *MCI Telecommunications Corp. v. H. Russell Frisby, Jr. et al. and Bell Atlantic-Maryland Inc.*, 998 F. Supp. 625 (D. MD 1998).

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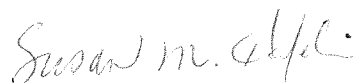
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methodological or arithmetic “errors in reasoning,” as Verizon suggests.<sup>2</sup> Verizon 2/24/03 Ex Parte at 1-2. Rather, in approving that tariff, the MPSC willfully disregarded both the unambiguous language of Section 251(c)(4) and the Commission’s order interpreting and implementing that language.<sup>3</sup>

With respect to DA, NALA/PCA asks only that Verizon be held to its statutory duty and “offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.” 47 U.S.C. §§ 251(c)(4)(A), 252(d)(3). It is undisputed that “any telecommunications service” includes Verizon’s retail DA service which, Verizon admits, includes “six free directory assistance calls.” Verizon 2/24/03 Ex Parte at 3. Because Verizon provides six free DA calls each month to its retail customers, under federal law it must provide them to resellers as well. Verizon, however, abuses its position as monopoly provider of wholesale telecommunications services by, *inter alia*, refusing to extend the call allowance to resellers. Having repeatedly chosen to shirk its duties under Sections 251(c)(4) and 252(d)(3), Verizon cannot now be deemed to have satisfied Item 14 of the Competitive Checklist. The Commission should therefore reject Verizon’s Section 271 application.

Please feel free to contact the undersigned should you have any questions regarding this ex parte.

Sincerely,



Glenn S. Richards

Susan M. Hafeli

cc: G. Cohen, Federal Communications Commission  
G. Gooke, Federal Communications Commission  
G. Remondino, Federal Communications Commission  
V. Schlesinger, Federal Communications Commission  
D. Laub, Maryland Public Service Commission  
J. Nichols, U.S. Department of Justice  
A. Berkowitz, Verizon

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<sup>2</sup> See, for example, the October 24, 1997 Letter from Daniel P. Gahagan, MPSC, to David Hall, Verizon Maryland, attached as Attachment 1 to Verizon’s Reply Declaration of Roberts et al.

<sup>3</sup> See, for example, *Implementation of the Local Competition Provisions in the Telecomm. Act of 1996*, First Report and Order, 11 FCC Red 15499 at ¶¶ 932, 956 (below-cost services are subject to the wholesale rate obligation under Section 251(c)(4))(subsequent history not included); see also 47 C.F.R. §§ 51.605, 51.607.